

File Copy

Trial Court No. F01-52159-H

EX PARTE	§	IN THE CRIMINAL DISTRICT
	§	
	§	COURT NUMBER ONE
	§	
JOHN DAVID BATTAGLIA	§	DALLAS COUNTY, TEXAS
Applicant	§	

DECLARATION OF CONFLICT BETWEEN CLIENT AND ATTORNEY

TO THE HONORABLE JUDGE JANICE WARDER:

COMES NOW, JOHN DAVID BATTAGLIA, Applicant, in the above styled and numbered cause, and files this declaration of conflict between client and attorney. In support of said declaration, Applicant would respectfully show the following:

1.

Applicant was convicted and sentenced to death in the Criminal District Court Number One of Dallas County, Texas.

2.

Applicant is an indigent person and consequently, the Honorable Judge Janice Warder of the Criminal District Court Number One of Dallas County, Texas, appointed Jan E. Hemphill, Attorney at Law, 4519 West Lovers Lane, Dallas, Texas 75209-3161, to represent Applicant.

3.

The Texas Court of Criminal Appeals approved the appointment of Jan E. Hemphill to represent Applicant for the purpose of filing an Article 11.071 application for writ of habeas corpus.

4.

There has been an ongoing conflict between Applicant and Jan E. Hemphill since May 28, 2002.

5.

Despite the fact that Jan E. Hemphill visited Applicant on May 28, 2002, counsel has not acquainted herself with Applicant and/or the facts and issues of the case.

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6.

There is a total breakdown in communications between client and attorney.

7.

Even though counsel had not reviewed the trial record or investigated the facts of the case she stated: "It looks like you are guilty and will be executed." (May 28, 2002, 3:00 PM)

8.

When Applicant attempted to have a meaningful discussion about the case and issues that should be raised in the application for writ of habeas corpus, counsel stated: "My hand is tired of writing, I have been here all day visiting with clients." When Applicant asked if perhaps Mr. Abbott could take some notes, Jan E. Hemphill further stated: "It has been a long day and we must leave." These statements were made within the first five minutes of our meeting.

9.

Rather than entertain anything Applicant had to say, Jan E. Hemphill stated: "You really don't have any issues that will help with your appeals."

10.

Some of the issues Applicant attempted to discuss with counsel, Jan E. Hemphill, include but are not limited to ineffective assistance of trial counsel in both guilt/innocence and punishment phases of the trial. Trial counsel, Paul Johnson, told Applicant before and during the trial: "I'm not here to defend you, I was appointed to make sure you get the death penalty and that all the i's are dotted and t's crossed on your death sentence." Defense counsel not only failed but refused to investigate and discover Applicant's psychiatric records as well as other mitigation evidence, including but not limited to evidence of childhood abuse. Trial counsel failed and refused to subject the State's case to a meaningful adversarial proceeding in both guilt/innocence and punishment phases of the trial. Trial counsel failed and refused upon request of Applicant to impeach

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State's witnesses or object to the State's knowingly presenting perjured testimony on both phases of the trial.

11.

The Fifth Circuit Court of Appeals has determined Jan E. Hemphill was ineffective in another death penalty case, **Lewis v. Dretke**, \_\_\_ F.3d \_\_\_ No.02-11007 (5th Cir.2003).

12.

Jan E. Hemphill testified that she was ineffective in her representation of George Andrew Hopper, another death penalty case.

13.

WHEREFORE, PREMISES CONSIDERED, Applicant prays that upon examination of this declaration that this Honorable court discharge Jan E. Hemphill from this case and appoint a competent attorney, qualified to represent Applicant in this death penalty case. If this Honorable court orders Jan E. Hemphill to file an affidavit in response to this declaration, Applicant respectfully requests the opportunity to file an affidavit opposing the appointment. In the alternative, Applicant requests a telephonic conference with the court and Jan E. Hemphill.

Respectfully submitted,

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John David Battaglia  
3872 F.M. 350 S. #999412  
Livingston, Texas 77351

I, John David Battaglia, being presently incarcerated at the Polunski Unit of the Texas Department of Criminal Justice, I.D., declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge.

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John David Battaglia  
Dated: \_\_\_\_\_

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